

March 30, 2006

## **POLICY MEMO**

**RE: DEVELOPMENTAL DISABILITIES “COMFORT ONE” DO NOT  
RESUSCITATE POLICY**

**FROM: JEFF STURM, DIRECTOR, DEVELOPMENTAL DISABILITIES  
PROGRAM**

### **BACKGROUND**

Montana statute states that “Comfort One”, a Montana document that allows restriction of life-sustaining medical care in the form of a Do Not Resuscitate Order, which must be signed by a physician and the individual’s guardian, must be recognized by certain medical and emergency personnel. Direct Care Staff of Developmental Disabilities Community Services are not covered by this law.

“Comfort One” order, the common term for one of the legal processes authorizing the withholding of life-sustaining resuscitative treatment, does not appear in Montana Law. The terminology that appears in the law is “Do Not Resuscitate Order” (DNR).

Montana law providing for the use of DNR Orders is at Title 50, chapter 10 MCA. It appears in conjunction with the other related statutory code regarding the restriction of medical treatment.

The withholding of life sustaining treatment (resuscitation) may only be done under DNR law by:

- an attending physician or attending Advanced Practice Registered Nurse acting based upon a DNR identification (Card, necklace, et al);
- attending emergency medical services personnel acting based upon a DNR identification.

Other medical professionals are not allowed under law to make a decision to Withhold life-sustaining treatment. They can only act at the direction of an attending physician or attending Advanced Practice Registered Nurse. This is also true of non-medical personnel such as direct care staff in community services settings.

It is clear that any professional or non-professional personnel not authorized by the law to withdraw life sustaining procedures may not act to do so and should they do so they may bear potential liability through a wrongful death action even if there was a DNR in effect.

A DNR Order is not effective if the person who is the subject of the order, is not in

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agreement with its direction. If the person states or otherwise indicates disagreement with an existing DNR Order or otherwise indicates the need for assistance, then the assistance should not be withheld even though there is an existing DNR Order. A person may not be compelled to consent to a DNR Order as a condition for receiving health care services. Anyone who subjects a person to coercion for purposes of obtaining a DNR Order is subject to certain penalties.

The authority of a guardian under Montana law is based upon the nature of the legal guardianship ordered by the district court. Guardianship authority varies widely and the purposes and extent of that authority should be analyzed by an attorney. The representation of a guardian as to the extent of the guardian's authority should not be relied upon. The guardianship order should be obtained for review by an attorney.

Even if it were determined that the court's guardianship order provided for a full legal guardianship or a guardianship for medical purposes, that authority should not be presumed to allow the guardian to direct provider personnel to withhold life-sustaining procedures for the guardian's ward. The authority of a full guardianship is not absolute and may not impinge on fundamental civil rights of the person who is the subject of the guardianship. Furthermore, there is the risk that direct care personnel acting upon such presumed authority from a legal guardian would be at risk of bearing some liability for a wrongful death tort action.

The existence of a DNR protocol does not in conjunction with the authority of a full or medical legal guardianship provide the legal guardian with authority to direct the withholding of life-sustaining procedures. The Legislature has been very careful about providing authority by which needed medical treatment and life-sustaining procedures may be withdrawn or withheld as indicated by the involved provisions of the DNR law and Rights Of The Terminally Ill Act. The DNR law does not expressly grant any authority to a legal guardian.

### **POLICY**

Therefore, Effective March 30, 2006, all group home staff, including nurses, are required to call 911 immediately upon determining that an individual with or without a "Comfort One" DNR Order requires medical care and proceed to provide life-sustaining care to the best of their abilities until Emergency Medical Personnel arrive. Emergency Medical personnel upon arrival should then be notified of the "Comfort One" DNR document. Emergency Medical personnel will suction airways, administer oxygen, position for comfort, splint control bleeding, provide pain medication and transport individuals to a hospital or emergency care facility. They will not perform Cardiopulmonary Resuscitation (CPR) on an individual with a "Comfort One" – Do Not Resuscitate" Order.

Individual Planning Teams are required to review each individual's "Comfort One" DNR Order at each planning meeting to determine if it needs to be revoked. Circumstances may change and the individual may no longer meet the requirements for terminal illness

and or be enrolled in a Hospice Program. Chronic health conditions do not meet the requirement for terminal illness.

The issue of guardianship in relationship to “Comfort One” DNR Orders must be reviewed by an attorney to determine the extent of the authority. Therefore, it should be noted that the State Developmental Disabilities Program will not collaborate with a guardian in imposing limitations or other documented changes in a person’s life that do not assure health and safety first and foremost, explicitly when that individual is in State and Federally funded public services.

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Jeff Sturm, Director, Developmental Disabilities Program

Date: March 30, 2006